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Illinois Commerce Commission
RAIL SAFETY SECTION

IN THE ILLINOIS COMMERCE COMMISSION
527 E. Capitol Avenue
Springfield, IL 62701

UNITED TRANSPORTATION UNION -)
ILLINOIS LEGISLATIVE BOARD)
against) Case T04-0082
CANADIAN PACIFIC RAILWAY)

FIRST AMENDED FORMAL COMPLAINT

NOW COMES the UNITED TRANSPORTATION UNION - ILLINOIS LEGISLATIVE BOARD ("UTU"), by and through its attorneys, HISKES, DILLNER, O'DONNELL, MAROVICH & LAPP, LTD., and for its Complaint against CANADIAN PACIFIC RAILWAY ("CP") states as follows:

COUNT I

1. This Complaint pertains to the West Yard at CP's rail switching yard at Bensenville, Illinois.

BACKGROUND

2. Up until approximately seven (7) years ago, CP provided a shelter building for engineers and switchmen in the West Yard. This shelter was a full service building which included: locker room, restroom, shower, lunchroom and office equipment.

3. Approximately seven (7) years ago, the CP demolished the full service building and brought a trailer into the West Yard to serve as a shelter facility. The trailer contained male and female restrooms and a lunchroom/break room for the engineers and switchmen.

4. When the full service building was demolished, the CP required all the engineers and

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switchmen to utilize the locker room and showers at the General Yard Office. The General Yard Office is not located in the West Yard where the work is performed and is more than one (1) mile by rail, approximately 1.5 miles by internal roadway or two (2) miles by municipal roadway from the West Yard.

5. On or about March 9, 2004, the UTU lodged an informal complaint with the Illinois Commerce Commission ("ICC") due to the conditions, among other things, of the shelter in the West Yard (See Exhibit "A" attached hereto).

6. On or about April 19, 2004, the ICC conducted an inspection of the West Yard facility, as well as three (3) other facilities at CP's Bensenville location. A written inspection report was prepared by the ICC and sent to CP. The ICC inspection report noted several violations which existed at the West Yard shelter. (See Exhibit "B" attached hereto).

7. On or about June 9, 2004, the ICC sent a follow-up letter to its inspection report of April 19, 2004, requesting information from the CP as to steps it was or had taken to remedy the violations noted previously. (See Exhibit "C" attached hereto).

8. On or about August 2, 2004, apparently in response to the ICC's inspection and request for remedial action, CP removed the trailer from the West Yard which had at least afforded the engineers and switchmen working in the West Yard with a restroom and lunch room/break area for their safety, comfort and convenience. (See Exhibit "D" attached hereto).

9. Since August 2, 2004, the engineers and switchmen who work in the West Yard have been without a shelter facility of any kind in the West Yard.

COMPLAINT

10. That at the West Yard of the CP Bensenville rail yard, the following violations of ICC regulations exist:

1. That in violation of 1545.110(c)(1), the CP has failed to provide engineers and switchmen who work in the West yard with adequate toilet facilities (male and female) which are conveniently located for the employees use.

2. That in violation of 1545.120, the CP has failed to provide engineers and switchmen who work in the West Yard with adequate washing facilities which are conveniently located for the employees use.

11. That pursuant to 1545.200, where shelter is requested by employees, shelter shall be provided by the railroad if that shelter is deemed necessary by the ICC.

12. That by this Complaint, if the CP desires to argue that it has not been already, the UTU, on behalf of its CP employees, requests that a shelter facility be provided for the West Yard employees. That further, said shelter facility should, at a minimum, contain adequate restrooms, a lunch room/break area and sufficient lockers for use by engineers and switchmen working in the West Yard.

WHEREFORE, UNITED TRANSPORTATION UNION, on behalf of its union members employed by CP, respectfully request that this Court grant all relief within the power of the Illinois Commerce Commission, including an order directing the CP to provide a shelter facility for the West Yard employees. Further, that CP be ordered to pay fines to the Illinois Commerce Commission for each and every day that the conditions at the Bensonville Railyards have been in violation of Illinois Commerce Commission regulations and state law and that such fines be determined as of April 22, 2004 until the date that a final order is rendered in this matter. Still further, that the CP be directed to provide the Illinois Commerce Commission with plans for said shelter facility for review and approval by the Illinois Commerce Commission prior to construction of said shelter facility and for such other and further relief as this Court deems fair and reasonable.

COUNT II

1. Count II pertains to the East Yard at CP's rail switching yard at Bensonville.
2. Up until September 2004, CP maintained multiple facilities conveniently located throughout the East Yard as shelter facilities for UTU employees working in the East Yard. Said shelter facilities were located at points in the East Yard where it was convenient for UTU employees to access the facilities for washroom needs, lunchroom breaks and locker facilities.

3. Around September 2004, CP removed the multiple shelter facilities after a single facility was constructed at the far south end of the East Yard.

4. The East Yard is a very expansive railyard both in length and width and the yard is a very busy yard with multiple trains coming in and exiting the yard at any one time causing long periods of time when the single washroom facility is not accessible by anyone working in the East Yard.

5. In September of 2004, when CP had made plans to remove the multiple shelter facilities and replace them with one single facility, Joseph Szabo the Legislative Director of the UTU had voiced concern with CP's plan to CP's Manager. (Attached hereto is a copy of Szabo's letter of September 15, 2004 to CP's Debby Balthazar). CP did not take Mr. Szabo up on his offer to work with CP in order to find a reasonable solution to the plan that CP had for the East Yard.

6. The new facility is not convenient for the UTU employees working in the East Yard as it is located on the far south side of the yard and requires employees to cross several sets of tracks which are extensively used by trains coming into and exiting the yard. These trains often block access to the facility for extended periods of time making access impractical and inconvenient.

7. In order to attempt to provide the East Yard UTU employees with washroom facilities which are convenient to their place of work, CP makes available to UTU employees the option of having a van transport the employees to the Center Yard Office where toilet facilities are available. However, the wait for van availability to transport the employee is often substantial and unreasonable and the vans, when they are available, are subject to blockage and delay by the trains in the yard.

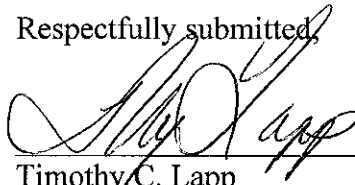
8. In order to attempt to provide the East Yard UTU employees with washroom facilities which are convenient to their place of work, CP has placed a portable toilet (port-a-potty) in the East Yard. However, the portable toilet is generally unsanitary and has no means for wash up after use. In addition, Section 1545.110 of the Administrative Code does not allow chemical toilets to be provided as a substitute for permanent toilets where running water is available as it is in the East Yard.

9. That at the East Yard of the CP Bensenville railyard, the following violations of ICC regulations exist.

1. That in violation of 1545.110(c)(1), the CP has failed to provide engineers and switchmen who work in the East yard with adequate toilet facilities (male and female) which are conveniently located for the employee's use.
2. That in violation of 1545.120, the CP has failed to provide engineers and switchmen who work in the East Yard with adequate washing facilities which are conveniently located for the employees' use.

WHEREFORE, UNITED TRANSPORTATION UNION, on behalf of its union members employed by CP, respectfully request that this Court grant all relief within the power of the Illinois Commerce Commission, including an order directing the CP to provide toilet facilities for the East Yard employees. Further, that CP be directed to provide the Illinois Commerce Commission with plans for said toilet facility for review and approval by the ICC prior to construction of said facility and for such other and further relief as this Court deems fair and reasonable.

Respectfully submitted,



Timothy C. Lapp
Attorney for United Transportation Union -
Illinois Legislative Board

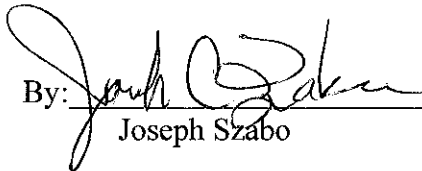
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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

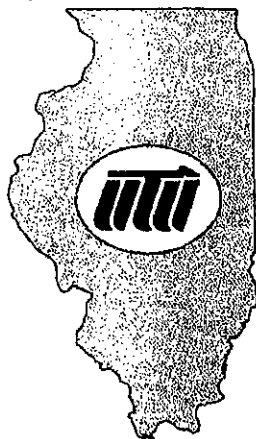
VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that I verily believe the same to be true.

DATED: February 8, 2006

By:  _____
 Joseph Szabo

Timothy C. Lapp
HISKES, DILLNER, O'DONNELL,
MAROVICH & LAPP, LTD.
16231 Wausau Avenue
South Holland, IL 60473
(708) 333-1234



united transportation union

Illinois Legislative Board

8 S. Michigan Avenue Suite 2006 Chicago, Illinois 60603 Phone: (312) 236-5353 Fax: (312) 236-1209

September 15, 2004

JOSEPH C. SZABO

State Legislative Director

J.H. BURNER

Assistant Legislative Director

R.W. GUY

Alternate Legislative Director

L.R. HOLMAN

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J.D. O'BRIEN

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1534	J. Gossett
1538	D. Martz
1597	M. Fagan
1883	D. Kortum
1895	R. Ross
1929	B. Smith
1973	T. Rodgers, Jr.

Mrs. Debby Balthazar

Manager Real Estate Facilities - U.S. Soo

Canadian Pacific Railway

501 Marquette Avenue, Suite 1500

Minneapolis, MN 55402

Re: Facilities – CP Bensenville Yard

Dear Mrs. Balthazar:

I am asking you to join in partnership with UTU in an attempt to resolve concerns regarding the facilities at the CP Bensenville Yard. My proposal is based upon a model that I have used successfully on other properties, and utilizes mutual respect and concern for each of the parties. The goal is to seek a non-adversarial resolution that meets each other's needs.

Specifically, I'm asking for CP's participation in establishing a Labor/Management Facilities Oversight Committee. This special tri-party committee would consist of representatives from Senior CP Management, my office, and Rail Safety Staff of the Illinois Commerce Commission.


A suggested plan would include:

- Placing the existing East Yard facility plans on hold.
- Reviewing comprehensively the operations and logistics of CP Bensenville Yard and jointly determining the facility needs of the employees.
- Jointly planning and designing the facilities, based upon the comprehensive review.
- Determining the construction timetable based upon the Capital Plan constraints of CP.
- Making "reasonably adequate" facility arrangements during the waiting and construction period.
- UTU not pursuing a Formal Complaint before the Commission and requesting Commission Staff not to process a Formal Complaint while the parties worked together in good faith on the above steps.

Mrs. Debby Balthazar
September 15, 2004
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Rather than having an adversarial process before a Judge dictate the outcome, I believe that such a partnership would ensure a win-win solution, and provided for the planning and timing of the facilities to be determined by the stakeholders. If CP agrees, I ask you to join UTU in this cooperative effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Szabo", with a long horizontal flourish extending to the right.

Joseph C. Szabo
State Director

cc: M. Stead, Illinois Commerce Commission

ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

UNITED TRANSPORTATION UNION -
ILLINOIS LEGISLATIVE BOARD

vs.

CANADIAN PACIFIC RAILWAY

No. T04-0082

NOTICE OF FILING

TO:

Illinois Commerce Commission
ATTN: David Lazarides
527 E. Capitol Avenue
Springfield, IL 62701

Mr. Daniel J. Mohan
Daly & Mohan, P.C.
Suite 1550
150 N. Wacker Drive
Chicago, IL 60606

PLEASE TAKE NOTICE THAT on the 8th day of February, 2006, I filed the attached MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT and FIRST AMENDED FORMAL COMPLAINT.

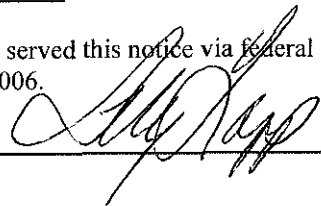
By: 

On of Its Attorneys

Timothy C. Lapp
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South Holland, IL 60473
(708) 333-1234
Atty. No. 80407

PROOF OF SERVICE

I, the undersigned, an attorney, on oath state that I served this notice via federal express to the above parties at their respective addresses on February 8, 2006.



SUBSCRIBED and SWORN to before
me this 8th day of February, 2006.


Notary Public

